

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

JAMES M. MARTIN,

Plaintiff,

V.

LIEUTENANT JOHNNY MCDANIEL,

Defendant.

CIVIL ACTION NO. 5:11-CV-192 (MTT)

ORDER

This matter is before the Court on the Recommendation of United States Magistrate Judge Stephen Hyles. (Doc. 16). The Magistrate Judge recommends granting the motions to amend to the extent the Plaintiff seeks to amend his Eighth Amendment claim to add allegations that Defendant Johnny McDaniel ordered inmate Wakenya Harris to attack him and to add the Georgia Department of Corrections and Warden Robert Toole as defendants. However, after screening the Complaint pursuant to 28 U.S.C. § 1915A, the Magistrate Judge held that the Plaintiff cannot maintain an action against the Georgia Department of Corrections because it is not a “person” subject to 42 U.S.C. § 1983 liability, and it is entitled to Eleventh Amendment immunity. Additionally, the Magistrate Judge held that the Plaintiff had not asserted sufficient facts to support a § 1983 supervisory liability claim against Toole. The Plaintiff filed an objection to the Recommendation. (Doc. 19). Pursuant to 28 U.S.C. § 636(b)(1), the Court has thoroughly considered the Objection and has made a de novo determination of the portions of the Recommendation to which the Plaintiff objects.

The Court accepts and adopts the findings, conclusions and recommendations of the Magistrate Judge. The Plaintiff may amend his complaint to add an allegation that Defendant McDaniel ordered inmate Wakenya Harris to attack him.

SO ORDERED, this the 24th day of October, 2011.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT